

Judge Advocate General of the Army (JAGA 1953/9033, 3 Dec. 1953).

In subsection (b), the words “is entitled to a discharge certificate similar in form and classification to the corresponding certificate” are substituted for the words “shall receive a discharge in writing in such form and with such classification as is or shall be”. The words “service in” are omitted as surplusage.

In subsection (c), the words “his enlistment expires” are substituted for the words “the expiration of terms of enlistment”.

#### CROSS REFERENCES

Army and Air Force enlisted members, limitations on discharge, see section 1169 of Title 10, Armed Forces.

### § 323. Withdrawal of Federal recognition

(a) Whenever a member of the National Guard ceases to have the qualifications prescribed under section 301 of this title or ceases to be a member of a federally recognized unit or organization of the National Guard, his Federal recognition shall be withdrawn.

(b) Under regulations to be prescribed by the President, the capacity and general fitness of an officer of the National Guard for continued Federal recognition may be investigated at any time by an efficiency board composed of commissioned officers of—

(1) the Regular Army or the Army National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Army, if he is a member of the Army National Guard; or

(2) the Regular Air Force or the Air National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Air Force, if he is a member of the Air National Guard.

If the findings of the board are unfavorable to the officer and are approved by the President, his Federal recognition shall be withdrawn.

(c) If a member of the Army National Guard of the United States or the Air National Guard of the United States is transferred to the Army Reserve or the Air Force Reserve, as the case may be, under section 12105, 12213(a), or 12214(a) of title 10, his Federal recognition is withdrawn.

(d) Except as provided in sections 1005 and 1006<sup>1</sup> of title 10, the Federal recognition of a second lieutenant of the Army National Guard who is discharged under section 3820(c) of title 10 for failure of promotion shall be withdrawn on the date of that discharge.

(e) Except as provided in sections 1005 and 1006<sup>1</sup> of title 10, the Federal recognition of a reserve officer of the Air Force who is not recommended for promotion under section 8368(c)(1) or (2) of title 10, or who is found to be not qualified for Federal recognition under section 8368(d) or (e) of title 10, shall be withdrawn.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Sept. 2, 1958, Pub. L. 85–861, §§2(11), 33(c)(2), 72 Stat. 1546, 1567; Oct. 5, 1994, Pub. L. 103–337, div. A, title XVI, §§1630(2), 1676(a)(3), 108 Stat. 2964, 3019.)

#### AMENDMENT OF SUBSECTIONS (d) AND (e)

*Pub. L. 103–337, div. A, title XVI, §§1630(2), 1691(b)(1), Oct. 5, 1994, 108 Stat. 2964, 3026, provided that, effective Oct. 1, 1996, this section is amended by striking out subsections (d) and (e) and inserting in lieu thereof the following:*

*(d) The Federal recognition of a reserve commissioned officer of the Army or the Air Force who is—*

*(1) federally recognized as an officer of the National Guard; and*

*(2) subject to involuntary transfer to the Retired Reserve, transfer to an inactive status list, or discharge under chapter 1407, 1409, or 1411 of title 10; shall, if not sooner withdrawn, be withdrawn on the date of such involuntary transfer or discharge.*

#### HISTORICAL AND REVISION NOTES 1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
323(a) .....	32:154 (last 26 words of last par.).	June 3, 1916, ch. 134, § 76 (1st sentence, and 1st 24 words of 2d sentence); restated June 15, 1933, ch. 87, § 13 (1st sentence, and 1st 24 words of 2d sentence), 48 Stat. 158.
323(b).	32:115 (1st sentence, and 1st 24 words of 2d sentence).	June 3, 1916, ch. 134, § 110 (last 25 words of last par.); restated Sept. 22, 1922, ch. 423, § 6 (last 13 words of last par.); restated May 12, 1928, ch. 529 (last 25 words), 45 Stat. 501.
323(c).	50:1116 (last 15 words of 1st sentence).	July 9, 1952, ch. 608, § 706 (last 15 words of 1st sentence), 66 Stat. 503.

In subsection (a) the words “ceases to have the qualifications prescribed under section 300 of this title” are substituted for 32:154 (last 26 words of last par.), since it is implicit that a member who could not be paid would lose his federally recognized status (see JAGA 1953/9033, 3 Dec. 1953). The last 23 words of subsection (a) are inserted as a necessary implication of the rule stated in section 309(c) of this title.

In subsection (b), the words “or warrant officer” are omitted, since section 101(9) of this title defines “officer” to include warrant officers. The word “detailed” is substituted for the word “appointed”, since the filling of the positions involved is not appointment to an office in the constitutional sense. The word “commissioned” is inserted after the words “composed of”, since the word “officer” alone, in 32:115, referred to a commissioned officer only (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)). The words “who outrank him” are substituted for the words “senior in rank to the officer under investigation”.

In subsection (c), the opening clause is substituted for the words “such transfer”. The words “his Federal recognition is withdrawn” are substituted for the words “shall terminate his federally recognized National Guard or Air National Guard status”.

#### 1958 ACT

Section of title 32	Source (U.S. Code)	Source (Statutes at Large)
323(d) .....	50:1261 (as applicable to Federal recognition).	Sept. 3, 1954, ch. 1257, §§324 (as applicable to Federal recognition), 522(e)(1) (56th through 63d words), (e)(2) (78th through 85th words), 68 Stat. 1161, 1181.
323(e).	50:1352(e)(1) (56th through 63d words). 50:1352(e)(2) (78th through 85th words).	

The change [in subsec. (b)(1) and (2)] is necessary to exclude from the efficiency board commissioned officers of the Army Reserve or Air Force Reserve, in accordance with the source law, the first sentence of section 76 of the Act of June 3, 1916, chapter 134 (formerly 32 U.S.C. 115 (1st sentence)).

In subsection (d), the words “notwithstanding section 115 of title 32” are omitted as surplusage.

<sup>1</sup> See References in Text note below.

In subsection (e), the words “if appropriate” are omitted as surplusage.

#### REFERENCES IN TEXT

Sections 1005 and 1006 of title 10, referred to in subsecs. (d) and (e), were renumbered sections 12645 and 12646 of title 10, respectively, by Pub. L. 103-337, div. A, title XVI, §1662(h)(2), Oct. 5, 1994, 108 Stat. 2996.

#### AMENDMENTS

1994—Subsec. (c). Pub. L. 103-337, §1676(a)(3), substituted “12105, 12213(a), or 12214(a)” for “3259, 3352(a), 8259, or 8352(a)”.

1958—Subsec. (b)(1). Pub. L. 85-861, §33(c)(2), substituted “the Regular Army or the Army National Guard of the United States, or both” for “a regular or reserve component of the Army”.

Subsec. (b)(2). Pub. L. 85-861, §33(c)(2), substituted “the Regular Air Force or the Air National Guard of the United States, or both” for “a regular or reserve component of the Air Force”.

Subsecs. (d), (e). Pub. L. 85-861, §2(11), added subsecs. (d) and (e).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1676(a)(3) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1630(2) of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(c)(2) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of Title 10, Armed Forces.

#### CROSS REFERENCES

Suspension of subsecs. (d) and (e) of this section, see section 111 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 111 of this title; title 10 sections 3820, 8368, 8820, 14907.

### § 324. Discharge of officers; termination of appointment

(a) An officer of the National Guard shall be discharged when—

- (1) he becomes 64 years of age; or
- (2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico or the District of Columbia, if he is a member of its National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, §1234(b)(6), 102 Stat. 2059.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
324(a) .....	32:114 (less 1st sentence).	June 3, 1916, ch. 134, §77; restated June 15, 1933, ch. 87, §14; restated June 19, 1935, ch. 277, §4, 49 Stat. 391; July 9, 1952, ch. 608, §803 (11th par.), 66 Stat. 505.
324(b).	32:114 (1st sentence).	

In subsection (a), the words “shall be discharged” are substituted for the words “shall thereupon cease to be a member thereof” since an official is required to give the officer a discharge certificate. The words “becomes 64 years of age” are substituted for the words “upon reaching the age of sixty-four years”. The words “his Federal recognition is withdrawn” are substituted for the words “When Federal recognition is withdrawn \* \* \* as provided in section 115 of this title”.

In subsection (b), the words “Subject to subsection (a)” are inserted for clarity. The words “as provided by the laws” are substituted for the words “in such manner as \* \* \* shall provide by law”.

#### AMENDMENTS

1988—Subsec. (b). Pub. L. 100-456 struck out “, the Canal Zone,” after “Puerto Rico”.

#### CROSS REFERENCES

Army National Guard of United States and Air National Guard of United States, discharge of officers, see sections 3820 and 8820 of Title 10, Armed Forces.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 3855, 8855.

### § 325. Relief from National Guard duty when ordered to active duty

(a) Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(b) So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Sept. 29, 1988, Pub. L. 100-456, div. A, title XII, §1234(b)(6), 102 Stat. 2059.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
325(a) .....	50:1120.	July 9, 1952, ch. 608, §§710, 712(b) (less last 17 words), 66 Stat. 503, 504.
325(b) .....	50:1122(b) (less last 17 words).	

In subsection (a), the words “in the service of the United States” are omitted as surplusage. The words “effective date of his order to active duty until he is relieved from that duty” are substituted for the words “active-duty date of the orders and for as long as they remain on active duty in the service of the United States”. 50:1120 (last sentence) is omitted as surplusage, since the persons involved are members of the Army or the Air Force.

In subsection (b), the words “upon relief from that duty” are substituted for the words “upon being relieved from active duty”. The words “their National Guard status” are substituted for the words “to the National Guard and Air National Guard in their respective States, Territories, and the District of Columbia”.

#### AMENDMENTS

1988—Subsec. (a). Pub. L. 100-456 struck out “, the Canal Zone,” after “Puerto Rico”.

#### CROSS REFERENCES

Active duty, see sections 12301 and 12401 of Title 10, Armed Forces.